

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant ,

v

ROBERT JOHN MAZAK,

Defendant-Appellee.

UNPUBLISHED

October 19, 2010

No. 293453

Oakland Circuit Court

LC No. 2009-226447-FH

Before: HOEKSTRA, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing the following charges against defendant: operating a motor vehicle while under the influence of intoxicating liquor-third offense (OUIL) (third offense), MCL 257.625(1) and (9)(c); and driving while license suspended (second or subsequent offense), MCL 257.904(1) and (3)(b). This action followed an order granting defendant's motion to quash/suppress evidence. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On April 11, 2009, Mark Szymanski was talking with a friend outside his home when a man pulled into his driveway. The man exited his vehicle while his two passengers, a woman and a child, remained inside. The man asked for directions to a nearby junkyard. The man's behavior, including asking for the same directions multiple times and repeatedly offering Szymanski a beer, led Szymanski to believe the man was intoxicated. After the man returned to his vehicle and drove away, Szymanski placed a call to 911 and reported a possible intoxicated driver. Szymanski provided a description of the vehicle, identified the number of occupants in the vehicle, and indicated that the man's likely destination was the junkyard. As a result of Szymanski's call, dispatch issued an advisement to be on the lookout (BOL) to officers on patrol.

Oakland County Sheriff Deputy Raymond Kujawa heard the BOL and received information about the incident from the mobile data computer in his patrol car, including the complainant's name, address, and telephone number. There was an indication that the suspect was believed to be intoxicated and open intoxicants might be present in the vehicle. Kujawa surmised from the information he had been provided that the suspect would likely be at, or just leaving, the junkyard by the time he could travel to the location. As Kujawa neared the junkyard, he observed a vehicle coming toward him that matched the description provided by Szymanski and Kujawa noted there were three occupants inside the vehicle. Kujawa pulled the

vehicle over, but admittedly did not personally observe any signs of intoxication on the part of the driver before effectuating the stop. Defendant was the driver of the vehicle. After failing a field sobriety test that Kujawa administered, defendant was arrested.

A preliminary hearing was held, resulting in a bind over. Defendant subsequently moved to quash the information, but later clarified his request as a motion to suppress. A hearing was held and the trial court granted defendant's motion and then dismissed the charges.

Plaintiff argues that the trial court erred in granting defendant's motion to suppress. We agree.

We review a trial court's factual findings in a suppression hearing for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, [this Court] review[s] de novo the trial court's ultimate ruling on the motion to suppress." *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

The *Jenkins* Court provided the following discussion of a police officer's authority to briefly stop and detain a person in cases where there is no probable cause for an arrest:

Under certain circumstances, a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest. *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968). A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. [*People v Custer*, 465 Mich 319, 327; 630 NW2d 870 (2001)]; *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001); *Terry, supra* at 30-31. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. *Oliver, supra* at 192. A determination regarding whether a reasonable suspicion exists "'must be based on commonsense judgments and inferences about human behavior.'" *Id.* at 197 (citation omitted). [*Jenkins*, 472 Mich at 32.]

In the instant case, the trial court concluded that the stop of defendant's vehicle was based on an anonymous tip from an unidentified individual. This finding constituted clear error. The mobile data computer in the deputy's patrol car identified the informant, provided his telephone number, and listed his address.

We likewise disagree with the trial court's conclusion that the tip did not contain sufficient indicia of reliability. Three factors should be considered in determining whether information from a citizen-informant provided enough indicia of reliability for there to be a reasonable suspicion for a stop: "(1) the reliability of the particular informant, (2) the nature of the particular information given to the police, and (3) the reasonability of the suspicion in light of the above factors." *People v Tooks*, 403 Mich 568, 577; 271 NW2d 503 (1978). As noted above, the informant in this case was identified. Identified citizens are presumptively reliable. *People v Powell*, 201 Mich App 516, 522-523 (opinion by Corrigan, P.J.); 506 NW2d 894

(1993); see also *People v Goeckerman*, 126 Mich App 517, 522; 337 NW2d 557 (1983). Moreover, the information the informant provided in this case was detailed. He described the car in which defendant was driving and the fact that a child and woman were in the car with defendant. He provided details on defendant's stated destination. Further, he indicated that defendant was not making sense, which was consistent with his observation that defendant was intoxicated. Thus, we find the tip possessed sufficient indicia of reliability.

We also find *People v Horton*, 283 Mich App 105; 767 NW2d 672 (2009), instructive in the instant case. In *Horton*, an unidentified man flagged down officers and reported that an approximately 30-year-old black male, who seemed nervous and upset, was driving a burgundy Chevrolet Caprice and had been waving around an "uzi type weapon" at a gas station approximately one mile away. *Id.* at 107. Within five minutes, the officers found the defendant in such a car at the gas station. *Id.* They affected a traffic stop and discovered "a Glock semi-automatic pistol with an extended magazine that protrudes, making it appear to be 'an uzi type weapon.'" *Id.* at 107-108. The *Horton* Court held that the totality of the circumstances in that case, including the unidentified tipster's personal observation of an individual waving a gun, coupled with the detailed information provided by the tipster related to the individual's vehicle that was verified by law enforcement a short time later, provided reasonable suspicion to detain the defendant. *Id.* at 113.

Defendant argues that it was not enough to corroborate some of the facts provided by the informant. He suggests that the suspected criminal activity itself--his intoxication--needed to be corroborated. We do not find this argument persuasive. In *Horton*, the witness described the criminal activity, the car, and the site where the crime was observed. The police observed the car at the site, and proceeded to stop the defendant with no independent assessment of his criminality, i.e., they did not immediately see any gun. Hence, police verification of the suspected criminal activity is not strictly necessary for probable cause to exist when other details provided by an informant are corroborated. Here, the informant described the defendant's intoxication, the car, the occupants, and the defendant's predicted destination. Except for the intoxication, all of this information was corroborated before the stop. Moreover, the need for corroboration was not as necessary to establish the informant's reliability as it was to establish the unidentified informant's reliability in *Horton*. The fact that the informant here was willing to identify himself was yet another indicator of his reliability. *Powell*, 201 Mich App at 522-523. Thus, based on the totality of these circumstances, we conclude that the deputy had a reasonable suspicion that defendant was operating his vehicle while intoxicated.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens